

ED BILDERBACK

IBLA 84-612

Decided February 25, 1986

Appeal from a decision of the Anchorage District Office, Alaska, Bureau of Land Management, declaring placer mining claims null and void ab initio. AA-41568, AA-41569.

Affirmed.

1. Alaska: Land Grants and Selections -- Mining Claims: Lands Subject to -- Mining Claims: Relocation -- Mining Claims: Withdrawn Land -- Segregation -- Withdrawals and Reservations: State Selections

BLM may properly declare a mining claim located on land segregated from mineral entry, pursuant to 43 CFR 2627.4(b), by virtue of the filing of a state selection application, null and void ab initio where the claim cannot relate back to a date of location prior to the segregation because the original location is deemed abandoned and void for failure to record timely under sec. 314(b) of the Federal Land Policy and Management of 1976, 43 U.S.C. § 1744(b) (1982).

APPEARANCES: Ethel Johnson, for Ed Bilderback.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Ed Bilderback 1/ has appealed from a decision of the Anchorage District Office, Alaska, Bureau of Land Management (BLM), dated April 20, 1984, declaring the Dune No. 1 and the Dune No. 2 placer mining claims, AA-41568 and AA-41569, null and void ab initio.

Appellant's mining claims were located October 8, 1980 (Dune No. 1 claim) and October 14, 1980 (Dune No. 2 claim) and filed for recordation

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1/ Appellant's notice of appeal was filed by Ethel Johnson, appellant's sister, and purports to be an appeal on behalf of appellant and on her own behalf. She asserts the claims were located in "our names." However, her name does not appear on the notices of location. Thus, the record does not indicate Ms. Johnson has any interest in appellant's mining claims which are the subject of this appeal

with BLM on November 28, 1980, pursuant to section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1982). The claims were described in the location notices as adjoining claims. On January 7, 1982, amended location notices were filed with BLM. The claims are situated in sec. 25, T. 21 S., R. 17 E., and sec. 30, T. 21 S., R. 18 E., Copper River Meridian, Alaska. That land is the subject of state selection applications, A-60603 and A-60604, filed December 31, 1963. In its April 1984 decision, BLM declared appellant's mining claims null and void ab initio because they were located at a time when the land was segregated from mineral entry pursuant to 43 CFR 2627.4(b).

In his statement of reasons for appeal, appellant contends that the claims were originally located in 1954 by appellant's father, C. R. Bilderback, and that, following his death, the claims were "restaked." Appellant has submitted copies of notices of location for the J.B. Association Claim No. 1 and the C.R.B. Claim No. 1 placer mining claims. These claims were located April 29, 1954, by C. R. Bilderback and Knute A. Johnson (J.B. Association) and by C. R. Bilderback (C.R.B.), and filed for record with the Cordova Recording District on July 28, 1954. Appellant has also submitted a copy of a notice of location recorded with the Cordova Recording District on May 1, 1969, for the Dune No. 2 placer mining claim, which depicts the two Dune claims and states: "These claims restaked from old lines -- B.J. [sic] Association Claim No. 1 [and] C.R.B. No. 1 Claim, from -- 'Federal to State lands.'" The location notice states that the claim was "[r]elocated" April 8, 1969, by C. R. Bilderback.

[1] It is well established that BLM properly declares an unpatented mining claim null and void ab initio where it was located at a time when the land was closed to mineral entry by virtue of the filing of a state selection application, pursuant to 43 CFR 2627.4(b). Thomas C. Bay, 87 IBLA 194 (1985).

However, appellant contends that his mining claims, located in October 1980, are essentially amendments of earlier claims which predate the filing of the two state selection applications. An amendment (unlike a relocation) of a claim located prior to segregation of the land from mineral entry by virtue of the filing of a state selection application will not be barred by the intervening segregation but will relate back to the date of the original location. Russell Hoffman (On Reconsideration), 87 IBLA 146 (1985). Thus, appellant must establish that his October 1980 locations are amended locations of the J.B. Association Claim No. 1 and C.R.B. Claim No. 1 mining claims, originally located in 1954. There is, however, a crucial fact which precludes appellant's mining claims from being considered amended locations.

We have ascertained from the Anchorage District Office that neither C. R. Bilderback, Knute A. Johnson, nor Ed Bilderback filed recordation documents with BLM for the claims originally located in 1954, pursuant to section 314(b) of FLPMA. <sup>2/</sup> That statutory provision provides that, in the

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<sup>2/</sup> By order dated Nov. 21, 1985, the Board instructed the Anchorage District Office to determine whether the mining claims located in 1954 or amended

case of a mining claim located prior to October 21, 1976, the claimant was required, "within the three-year period following October 21, 1976," to file a copy of the location notice with the proper BLM office. 43 U.S.C. § 1744(b) (1982). The deadline for filing, therefore, was October 22, 1979. See 43 CFR 3833.1-2(a) (1982). Failure to file timely is deemed conclusively to constitute an abandonment of a claim and the claim is thereby rendered void. 43 U.S.C. § 1744(c) (1982); 43 CFR 3833.1-1.

Accordingly, we must conclude that the original locations upon which appellant relies were rendered void by virtue of failure to record the claims on or before October 22, 1979. In such circumstances, appellant's mining claims located in October 1980 cannot be considered amended locations of the J.B. Association Claim No. 1 and the C.R.B. Claim No. 1 mining claims which therefore relate back to the original date of location prior to segregation of the land from mineral entry. At the time of amendment the original claims no longer existed. McCarthy Mining & Development Co., 87 IBLA 172 (1985). The claims must be considered relocations after segregation of the land from mineral entry. 3/ We conclude, therefore, that BLM properly declared appellant's mining claims null and void ab initio.

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fn. 2 (continued)

versions thereof (not including the 1980 locations) were "ever recorded with BLM" and, in addition, gave appellant an opportunity to furnish evidence of such a recordation. The Board required a response from both parties within 20 days of receipt of the order. On Dec. 2, 1985, the Anchorage District Office responded to the Board's order:

"Upon conducting a thorough search of both our computer and micro-fiche records no information on C. R. Bilderback, Knute A. Johnson, the J.B. Association Claim No. 1 or the C.R.B. Claim No. 1 was located. It's our determination that an earlier location of these claims [was] never recorded with the Bureau of Land Management."

Appellant has filed no response.

3/ In order to establish that a mining claim located after segregation of the land from mineral entry is an amended location, the claimant must not only show that the original location was valid, but also that he has an "unbroken chain of title tracing to the original claim." Russell Hoffman (On Reconsideration), supra at 148. There is no evidence in the record to indicate that Ed Bilderback, the 1980 locator of the Dune Nos. 1 and 2 claims, ever acquired an interest, by devise or otherwise, to the claims originally located in 1954. In our November 1985 order, we afforded appellant an opportunity to provide information, within 20 days of receipt of the order, showing when and by what means any interest in the J.B. Association Claim No. 1 and the C.R.B. Claim No. 1 was transferred to him. As stated in note 2, no response was filed. Accordingly, we cannot say that Ed Bilderback held title to the original mining claims at the time he purportedly amended the original claims. In such circumstances, these 1980 locations also could not be considered amended locations of the original claims. R. Gail Tibbetts v. Bureau of Land Management, 62 IBLA 124 (1982).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier  
Administrative Judge

We concur:

Bruce R. Harris  
Administrative Judge

R. W. Mullen  
Administrative Judge

